

SENATE BILL No. 544

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-4.1; IC 29-1; IC 31-11.5; IC 32-17.

Synopsis: Probate and property matters. Exempts property interests transferred to a surviving domestic partner from the inheritance tax imposed as a result of the other domestic partner's death. Provides that a surviving domestic partner is entitled to the same status as a surviving spouse in the probate code. Requires the clerk of the circuit court to establish a domestic partnership registry. Authorizes a couple that meets certain requirements to register their relationship as a domestic partnership. Enables domestic partnerships to own property as tenants in the entireties. Specifies that certain personal property becomes the sole property of a surviving domestic partner upon the death of the other domestic partner.

Effective: July 1, 2009.

Taylor

January 15, 2009, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 544

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-4.1-1-3, AS AMENDED BY P.L.238-2005,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 3. (a) "Class A transferee" means a transferee who
4 is a:

- 5 (1) lineal ancestor of the transferor;
- 6 (2) lineal descendant of the transferor;
- 7 (3) stepchild of the transferor, whether or not the stepchild is
- 8 adopted by the transferor; or
- 9 (4) lineal descendant of a stepchild of the transferor, whether or
- 10 not the stepchild is adopted by the transferor.

11 (b) "Class B transferee" means a transferee who is a:

- 12 (1) brother or sister of the transferor;
- 13 (2) descendant of a brother or sister of the transferor; or
- 14 (3) spouse, widow, or widower of a child of the transferor.

15 (c) "Class C transferee" means a transferee, except a surviving
16 spouse **or domestic partner**, who is neither a Class A nor a Class B
17 transferee.

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(d) For purposes of this section, a legally adopted child is to be treated as if the child were the natural child of the child's adopting parent if the adoption occurred before the individual was totally emancipated. However, an individual adopted after being totally emancipated shall be treated as the natural child of the adopting parent if the adoption was finalized before July 1, 2004.

(e) For purposes of this section, if a relationship of loco parentis has existed for at least ten (10) years and if the relationship began before the child's fifteenth birthday, the child is to be considered the natural child of the loco parentis parent.

(f) As used in this section, "stepchild" means a child of the transferor's surviving, deceased, or former spouse who is not a child of the transferor.

SECTION 2. IC 6-4.1-1-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.5. "Domestic partner" has the meaning set forth in IC 31-11.5-1-2.**

SECTION 3. IC 6-4.1-1-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 16. The:**

(1) rights and privileges conferred upon a domestic partner under this article; and

(2) exemption granted to a domestic partner under IC 6-4.1-3-7(a);

apply to the estate of an individual who dies after June 30, 2009.

SECTION 4. IC 6-4.1-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7. (a)** Each property interest which a decedent transfers to **his the decedent's** surviving spouse **or domestic partner** is exempt from the inheritance tax imposed as a result of **his the decedent's** death.

(b) For the purpose of subsection (a), "property interest which a decedent transfers to **his the decedent's** surviving spouse" includes a property interest from which the surviving spouse is entitled for life to income or payments and which otherwise qualifies for deduction from the gross estate of the decedent under Section 2056(b)(5) or 2056(b)(6) of the Internal Revenue Code.

(c) The personal representative of the decedent's estate or the trustee or transferee of property transferred by the decedent may, for the purpose of the exemption established by subsection (a), elect to treat property passing from the decedent in which the surviving spouse has a qualifying income interest for life as a property interest which a decedent transfers to **his the decedent's** surviving spouse. For purposes

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of this section, "qualifying income interest for life" means a qualifying income interest for life (as defined in Section 2056(b)(7) of the Internal Revenue Code).

(d) The election referred to in subsection (c) shall be made in writing and shall be attached to the inheritance tax return, if one is required to be filed. The election, once made, is irrevocable.

SECTION 5. IC 6-4.1-3-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. (a) For purposes of this section, the term "property subject to the inheritance tax" means property transferred by a decedent under a taxable transfer.

(b) The following items, and no others, may be deducted from the value of property interests transferred by a resident decedent under his will, under the laws of intestate succession, or under a trust:

- (1) the decedent's debts which are lawful claims against his resident estate;
- (2) taxes on the decedent's real property which is located in this state and subject to the inheritance tax, if the real property taxes were a lien at the time of the decedent's death;
- (3) taxes on decedent's personal property which is located in this state and subject to the inheritance tax, if the personal property taxes are a personal obligation of the decedent or a lien against the property and if the taxes were unpaid at the time of the decedent's death;
- (4) taxes imposed on the decedent's income to date of death, if the taxes were unpaid at the time of his death;
- (5) inheritance, estate, or transfer taxes, other than federal estate taxes, imposed by other jurisdictions with respect to intangible personal property which is subject to the inheritance tax;
- (6) mortgages or special assessments which, at the time of decedent's death, were a lien on any of decedent's real property which is located in this state and subject to the inheritance tax;
- (7) decedent's funeral expenses;
- (8) amounts, not to exceed one thousand dollars (\$1,000), paid for a memorial for the decedent;
- (9) expenses incurred in administering property subject to the inheritance tax, including but not limited to reasonable attorney fees, personal representative fees, and trustee fees;
- (10) the amount of any allowance provided to the resident decedent's children by IC 29-1-4-1; and
- (11) the value of any property actually received by a resident decedent's surviving spouse **or domestic partner** in satisfaction of the allowance provided by IC 29-1-4-1, regardless of whether

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or not a claim for that allowance has been filed under IC 29-1-14.

(c) The amounts which are deductible under subsection (b)(6) of this section are deductible only from the value of the real property encumbered by the mortgage or special assessment.

SECTION 6. IC 6-4.1-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) A person who has possession of or control over personal property held jointly by a resident decedent and another person may not transfer the property to the surviving joint tenant, unless:

(1) the surviving joint tenant is the decedent's surviving spouse **or domestic partner**; or

(2) the property is money held in a joint checking account; without the written consent of the department of state revenue or the county assessor of the county in which the resident decedent was domiciled at the time of the decedent's death.

(b) Except as provided in subsection (c), a person who has possession of or control over personal property held in a trust that is subject to the Indiana inheritance or estate tax at the time of a resident decedent's death may not transfer the property to a beneficiary or any other person, unless the beneficiary or other person is the decedent's surviving spouse **or domestic partner**, without the written consent of the department of state revenue or the county assessor of the county in which the resident decedent was domiciled at the time of the decedent's death.

(c) A person who has possession of or control over personal property held in trust may transfer the property without the written consent of the department of state revenue or the county assessor of the county in which the resident decedent was domiciled at the time of the decedent's death under the following conditions:

(1) The transferee is domiciled in Indiana.

(2) The transferee completes a sworn affidavit on a form prescribed by the department of state revenue that states:

(A) the transfer of the personal property is not subject to Indiana inheritance or estate tax; and

(B) the reasons the transfer is not subject to tax.

(3) A copy of the affidavit required under subdivision (2) is immediately filed with the department of state revenue.

(d) A person who has possession of or control over a resident decedent's personal property (except proceeds payable under a life insurance policy) may not transfer the property to any other person, unless:

(1) the other person is the decedent's surviving spouse **or**

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1 **domestic partner; or**

2 (2) the property is money held in a checking account;
3 without the written consent of the department of state revenue or the
4 county assessor of the county in which the resident decedent was
5 domiciled at the time of the decedent's death.

6 (e) The department of state revenue or the appropriate county
7 assessor may consent to a transfer if the department or the county
8 assessor believes that the transfer will not jeopardize the collection of
9 inheritance tax.

10 (f) The department of state revenue shall send a copy of any consent
11 to transfer that it issues under this section to the county assessor of the
12 county in which the resident decedent was domiciled at the time of the
13 decedent's death.

14 SECTION 7. IC 6-4.1-8-4.6 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4.6. A person who has
16 possession of or control over money held in a checking account in
17 which a resident decedent had a legal interest shall notify the
18 department or the county assessor of the county in which the resident
19 decedent was domiciled at the time of death, when money is transferred
20 from the account to a person, other than the resident decedent's
21 surviving spouse **or domestic partner.**

22 SECTION 8. IC 29-1-1-3 IS AMENDED TO READ AS FOLLOWS
23 [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The following definitions
24 apply throughout this article, unless otherwise apparent from the
25 context:

26 (1) "Child" includes an adopted child but does not include a
27 grandchild or other more remote descendants, nor, except as
28 provided in ~~IC 29-1-2-5~~, **IC 29-1-2-7**, a child born out of
29 wedlock.

30 (2) "Claims" includes liabilities of a decedent which survive,
31 whether arising in contract or in tort or otherwise, funeral
32 expenses, the expense of a tombstone, expenses of administration,
33 and all taxes imposed by reason of the person's death. However,
34 for purposes of IC 29-1-2-1 and IC 29-1-3-1, the term does not
35 include taxes imposed by reason of the person's death.

36 (3) "Court" means the court having probate jurisdiction.

37 (4) "Decedent" means one who dies testate or intestate.

38 (5) "Devise" or "legacy", when used as a noun, means a
39 testamentary disposition of either real or personal property or
40 both.

41 (6) "Devise", when used as a verb, means to dispose of either real
42 or personal property or both by will.

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(7) "Devisee" includes legatee, and "legatee" includes devisee.

(8) "Distributee" denotes those persons who are entitled to the real and personal property of a decedent under a will, under the statutes of intestate succession, or under IC 29-1-4-1.

(9) "Domestic partner" has the meaning set forth in IC 31-11.5-1-2.

(10) "Domestic partnership" means a domestic partnership registered under IC 31-11.5-2.

~~(9)~~ **(11)** "Estate" denotes the real and personal property of the decedent or protected person, as from time to time changed in form by sale, reinvestment, or otherwise, and augmented by any accretions and additions thereto and substitutions therefor and diminished by any decreases and distributions therefrom.

~~(10)~~ **(12)** "Fiduciary" includes a:

(A) personal representative;

(B) guardian;

(C) conservator;

(D) trustee; and

(E) person designated in a protective order to act on behalf of a protected person.

~~(11)~~ **(13)** "Heirs" denotes those persons, including the surviving spouse **or domestic partner**, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate, unless otherwise defined or limited by the will.

~~(12)~~ **(14)** "Incapacitated" has the meaning set forth in IC 29-3-1-7.5.

~~(13)~~ **(15)** "Interested persons" means heirs, devisees, spouses **or domestic partners**, creditors, or any others having a property right in or claim against the estate of a decedent being administered. This meaning may vary at different stages and different parts of a proceeding and must be determined according to the particular purpose and matter involved.

~~(14)~~ **(16)** "Issue" of a person, when used to refer to persons who take by intestate succession, includes all lawful lineal descendants except those who are lineal descendants of living lineal descendants of the intestate.

~~(15)~~ **(17)** "Lease" includes an oil and gas lease or other mineral lease.

~~(16)~~ **(18)** "Letters" includes letters testamentary, letters of administration, and letters of guardianship.

~~(17)~~ **(19)** "Minor" or "minor child" or "minority" refers to any

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person under the age of eighteen (18) years.

~~(18)~~ (20) "Mortgage" includes deed of trust, vendor's lien, and chattel mortgage.

~~(19)~~ (21) "Net estate" refers to the real and personal property of a decedent less the allowances provided under IC 29-1-4-1 and enforceable claims against the estate.

~~(20)~~ (22) "Person" includes natural persons and corporations.

~~(21)~~ (23) "Personal property" includes interests in goods, money, choses in action, evidences of debt, and chattels real.

~~(22)~~ (24) "Personal representative" includes executor, administrator, administrator with the will annexed, administrator de bonis non, and special administrator.

~~(23)~~ (25) "Property" includes both real and personal property.

~~(24)~~ (26) "Protected person" has the meaning set forth in IC 29-3-1-13.

~~(25)~~ (27) "Real property" includes estates and interests in land, corporeal or incorporeal, legal or equitable, other than chattels real.

~~(26)~~ (28) "Will" includes all wills, testaments, and codicils. The term also includes a testamentary instrument which merely appoints an executor or revokes or revives another will.

(b) The following rules of construction apply throughout this article unless otherwise apparent from the context:

(1) The singular number includes the plural and the plural number includes the singular.

(2) The masculine gender includes the feminine and neuter.

SECTION 9. IC 29-1-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. When any judge or ~~his~~ **the judge's spouse or domestic partner** shall be related within the third degree of consanguinity, according to the civil law, to any of the parties or their attorneys, shall have drawn the will of the decedent, or shall be interested or have been counsel in any probate proceeding or any matter therein, the same shall be grounds for disqualifying such judge from acting in a controverted matter with respect to which his disqualification exists. When grounds for disqualification exist, the judge may refuse to act as judge therein; or, upon filing of a petition to disqualify such judge, stating the grounds therefor, by any person interested in the particular matter with respect to which his disqualification exists, the judge must not act therein. The grounds for disqualification stated herein are enumerated as additional grounds, and not in limitation of applicable grounds for disqualification provided by statute or by Supreme Court rule with respect to trial

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judges generally.

SECTION 10. IC 29-1-1-25 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 25. Rights and privileges granted to a surviving domestic partner under this article apply to the estate of an individual who dies after June 30, 2009.**

SECTION 11. IC 29-1-2-1, AS AMENDED BY P.L.101-2008, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The estate of a person dying intestate shall descend and be distributed as provided in this section.

(b) Except as otherwise provided in subsection (c), the surviving spouse **or domestic partner** shall receive the following share:

(1) One-half (1/2) of the net estate if the intestate is survived by at least one (1) child or by the issue of at least one (1) deceased child.

(2) Three-fourths (3/4) of the net estate, if there is no surviving issue, but the intestate is survived by one (1) or both of the intestate's parents.

(3) All of the net estate, if there is no surviving issue or parent.

(c) If the surviving spouse **or domestic partner** is a second or other subsequent spouse **or domestic partner** who did not at any time have children by the decedent, and the decedent left surviving the decedent a child or children or the descendants of a child or children by a previous spouse **or domestic partner**, the surviving second or subsequent childless spouse **or domestic partner** shall take only an amount equal to twenty-five percent (25%) of the remainder of:

(1) the fair market value as of the date of death of the real property of the deceased spouse **or domestic partner**; minus

(2) the value of the liens and encumbrances on the real property of the deceased spouse **or domestic partner**.

The fee shall, at the decedent's death, vest at once in the decedent's surviving child or children, or the descendants of the decedent's child or children who may be dead. A second or subsequent childless spouse **or domestic partner** described in this subsection shall, however, receive the same share of the personal property of the decedent as is provided in subsection (b) with respect to surviving spouses **or domestic partners** generally.

(d) The share of the net estate not distributable to the surviving spouse **or domestic partner**, or the entire net estate if there is no surviving spouse **or domestic partner**, shall descend and be distributed as follows:

(1) To the issue of the intestate, if they are all of the same degree

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of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degrees shall take by representation.

(2) Except as provided in subsection (e), if there is a surviving spouse **or domestic partner** but no surviving issue of the intestate, then to the surviving parents of the intestate.

(3) Except as provided in subsection (e), if there is no surviving spouse, **domestic partner**, or issue of the intestate, then to the surviving parents, brothers, and sisters, and the issue of deceased brothers and sisters of the intestate. Each living parent of the intestate shall be treated as of the same degree as a brother or sister and shall be entitled to the same share as a brother or sister. However, the share of each parent shall be not less than one-fourth (1/4) of the decedent's net estate. Issue of deceased brothers and sisters shall take by representation.

(4) If there is no surviving parent or brother or sister of the intestate, then to the issue of brothers and sisters. If the distributees described in this subdivision are all in the same degree of kinship to the intestate, they shall take equally or, if of unequal degree, then those of more remote degrees shall take by representation.

(5) If there is no surviving issue or parent of the intestate or issue of a parent, then to the surviving grandparents of the intestate equally.

(6) If there is no surviving issue or parent or issue of a parent, or grandparent of the intestate, then the estate of the decedent shall be divided into that number of shares equal to the sum of:

(A) the number of brothers and sisters of the decedent's parents surviving the decedent; plus

(B) the number of deceased brothers and sisters of the decedent's parents leaving issue surviving both them and the decedent;

and one (1) of the shares shall pass to each of the brothers and sisters of the decedent's parents or their respective issue per stirpes.

(7) If interests in real estate go to a husband and wife **or a domestic partnership** under this subsection, the aggregate interests so descending shall be owned by them as tenants by the entirety. Interests in personal property so descending shall be owned as tenants in common.

(8) If there is no person mentioned in subdivisions (1) through (7), then to the state.

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(e) A parent may not receive an intestate share of the estate of the parent's minor or adult child if ~~(+)~~ the parent was convicted of causing the death of the other parent by:

~~(A)~~ (1) murder (IC 35-42-1-1);

~~(B)~~ (2) voluntary manslaughter (IC 35-42-1-3);

~~(C)~~ (3) another criminal act, if the death does not result from the operation of a vehicle; or

~~(D)~~ (4) a crime in any other jurisdiction in which the elements of the crime are substantially similar to the elements of a crime listed in ~~clauses (A)~~ subdivisions (1) through ~~(C)~~; and (3).

~~(2) the victim of the crime is the other parent of the child.~~

If a parent is disqualified from receiving an intestate share under this subsection, the estate of the deceased child shall be distributed as though the parent had predeceased the child.

(f) As used in this subsection, "qualified relationship" means a marriage or domestic partnership. For purposes of determining whether subsection (c) applies in determining the amount that a surviving spouse or domestic partner is entitled to receive from the decedent's estate under this section, a surviving spouse or domestic partner is considered a second or subsequent surviving spouse or domestic partner if the decedent had been in one (1) or more qualified relationships before:

(1) marrying the surviving spouse; or

(2) registering a domestic partnership with the surviving domestic partner.

SECTION 12. IC 29-1-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. (a) The intestate share or other expectancy to which the spouse, **domestic partner**, or any other heir is entitled may be waived at any time by a written contract, agreement or waiver signed by the party waiving such share or expectancy. The promise of marriage, in the absence of fraud, is sufficient consideration in the case of an agreement made before marriage. In all other cases such contract, an agreement or waiver is binding upon the parties to the agreement if executed after a full disclosure of the nature and extent of such right, and if the thing or promise given to such party is a fair consideration under all the circumstances.

(b) Except as otherwise provided in the agreement, a waiver executed by the decedent's spouse **or domestic partner** is considered a waiver of the right to elect to take against the decedent's will. The written agreement may be filed in the same manner as is provided for the filing of an election under IC 29-1-3-3.

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SECTION 13. IC 29-1-2-15, AS AMENDED BY P.L.238-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. If a person shall abandon his or her spouse **or domestic partner** without just cause, he or she shall take no part of ~~his or her~~ the estate or trust **of the abandoned spouse or domestic partner.**

SECTION 14. IC 29-1-3-1, AS AMENDED BY P.L.61-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) When a ~~married an~~ individual dies testate as to any part of the individual's estate, the **individual's** surviving spouse **or domestic partner** is entitled to take against the will under the limitations and conditions stated in this chapter. The surviving spouse **or domestic partner**, upon electing to take against the will, is entitled to one-half (1/2) of the net personal and real estate of the testator. However, if the surviving spouse **or domestic partner** is a second or other subsequent spouse who did not at any time have children by the decedent and the decedent left surviving a child or children or the descendants of a child or children by a previous spouse **or domestic partner**, the surviving second or subsequent childless spouse **or domestic partner** shall upon such election take one-third (1/3) of the net personal estate of the testator plus an amount equal to twenty-five percent (25%) of the remainder of:

- (1) the fair market value as of the date of death of the real property of the testator; minus
- (2) the value of the liens and encumbrances on the real property of the testator.

In determining the net estate of a ~~deceased spouse~~ **the decedent** for the purpose of computing the amount due the surviving spouse **or domestic partner** electing to take against the will, the court shall consider only such property as would have passed under the laws of descent and distribution.

(b) When the value of the property given the surviving spouse **or domestic partner** under the will is less than the amount the surviving spouse **or domestic partner** would receive by electing to take against the will, the surviving spouse **or domestic partner** may elect to retain any or all specific bequests or devises given to the surviving spouse **or domestic partner** in the will at their fair market value as of the time of the decedent's death and receive the balance due in cash or property.

(c) Except as provided in subsection (b), in electing to take against the will, the surviving spouse **or domestic partner** is deemed to renounce all rights and interest of every kind and character in the personal and real property of the ~~deceased spouse~~, **decedent**, and to

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1 accept the elected award in lieu thereof.

2 (d) When a surviving spouse **or domestic partner** elects to take
3 against the will, the surviving spouse **or domestic partner** shall be
4 deemed to take by descent, as a modified share, the part of the net
5 estate as does not come to the surviving spouse **or domestic partner**
6 by the terms of the will. Where by virtue of an election pursuant to this
7 chapter it is determined that the surviving spouse **or domestic partner**
8 has renounced the surviving spouse's **or domestic partner's** rights in
9 any devise, either in trust or otherwise, the will shall be construed with
10 respect to the property so devised to the surviving spouse **or domestic**
11 **partner** as if the surviving spouse **or domestic partner** had
12 predeceased the testator.

13 (e) As used in this subsection, "**qualified relationship**" means a
14 **marriage or domestic partnership**. For purposes of determining the
15 **amount that a surviving spouse or domestic partner is entitled to**
16 **receive from the testator's estate because of an election made**
17 **under subsection (a), a surviving spouse or domestic partner is**
18 **considered a second or subsequent surviving spouse or domestic**
19 **partner if the testator had been in one (1) or more qualified**
20 **relationships before:**

21 (1) **marrying the surviving spouse; or**

22 (2) **entering a domestic partnership with the surviving**
23 **domestic partner.**

24 SECTION 15. IC 29-1-3-2, AS AMENDED BY P.L.238-2005,
25 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2009]: Sec. 2. (a) Except as provided in subsection (b), the
27 election by a surviving spouse **or domestic partner** to take the share
28 hereinbefore provided must be made not later than three (3) months
29 after the date of the order admitting to probate the will against which
30 the election is made.

31 (b) If, at the expiration of such period for making the election,
32 litigation is pending to test the validity or determine the effect or
33 construction of the will or to determine the existence of issue surviving
34 the deceased, or to determine any other matter of law or fact which
35 would affect the amount of the share to be received by the surviving
36 spouse **or domestic partner**, the right of such surviving spouse **or**
37 **domestic partner** to make an election shall not be barred until the
38 expiration of thirty (30) days after the final determination of the
39 litigation.

40 SECTION 16. IC 29-1-3-3 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The election to
42 take the share hereinbefore provided shall be in writing, signed and

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acknowledged by the surviving spouse **or domestic partner** or by the guardian of ~~his~~ **the** estate **of the surviving spouse or domestic partner** and shall be filed in the office of the clerk of the court. It may be in the following form:

I, A.B., surviving wife (or husband **or domestic partner**) of C.D., late of the county of _____ and state of _____, do hereby elect to take my legal share in the estate of the said C.D. and I do hereby renounce provisions in the will of the said C.D. inconsistent herewith.

Signed,

(Signature)

(Acknowledgment)

(b) Said election shall be recorded by such clerk in the record of wills, marginal reference being made from such record to the book and page in which such will is recorded, and from the record of such will to the book and page where such election is recorded.

(c) The clerk shall cause a copy of said election to be served upon the personal representative and his attorney of record by United States mail addressed to such persons at their respective addresses as shown by the petition for probate of will and appointment of personal representative.

SECTION 17. IC 29-1-3-4, AS AMENDED BY P.L.246-2005, SECTION 213, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Except as provided in subsection (b), the right of election of the surviving spouse **or domestic partner** is personal to the spouse **or domestic partner**. It is not transferable and cannot be exercised subsequent to the ~~spouse's~~ death **of the spouse or domestic partner**. A person with a valid power of attorney for the surviving spouse **or domestic partner** may elect for the spouse **or domestic partner** if the power of attorney has general authority with respect to estates as provided in IC 30-5-5-15(a)(4). If the surviving spouse **or domestic partner** is a protected person, the court may order the guardian of the ~~spouse's~~ estate **of the spouse or domestic partner** to elect for the spouse **or domestic partner**.

(b) The ~~spousal~~ **right of election belonging to a surviving spouse or domestic partner** may be exercised subsequent to the ~~spouse's~~ death **of the spouse or domestic partner** under the following circumstances:

- (1) The surviving spouse **or domestic partner** died before the election could be made.
- (2) The election is being made to recover Medicaid benefits that were paid on behalf of the deceased surviving spouse **or domestic**

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1 **partner.**

2 The office of Medicaid policy and planning may exercise the right of
3 election under this subsection. The ~~spousal~~ election **permitted by this**
4 **subsection** is only enforceable up to the amount of Medicaid benefits
5 that were received and the amount may only be distributed to the office
6 of Medicaid policy and planning.

7 SECTION 18. IC 29-1-3-5 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. An election by or on
9 behalf of a surviving spouse **or domestic partner** to take the share
10 provided in section 1 of this chapter once made shall be binding and
11 shall not be subject to change except for such causes as would justify
12 an equitable decree for the rescission of a deed.

13 SECTION 19. IC 29-1-3-6 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) The right of
15 election of a surviving spouse **or domestic partner** given under
16 section 1 of this chapter may be waived ~~before or after marriage~~ by a
17 written contract, agreement signed by the party waiving the right of
18 election, after full disclosure of the nature and extent of such right, if
19 the thing or the promise given such party is a fair consideration under
20 all the circumstances.

21 (b) The promise of marriage, in the absence of fraud, is sufficient
22 consideration in the case of an agreement made before marriage. An
23 agreement waiving a right of election may be filed in the same manner
24 as provided for the filing of an election under section 3 of this chapter.

25 SECTION 20. IC 29-1-3-7 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. When a surviving
27 spouse **or domestic partner** makes no election to take against the will,
28 ~~he the surviving spouse or domestic partner~~ shall receive the benefit
29 of all provisions in ~~his~~ favor **of the surviving spouse or domestic**
30 **partner** in the will, if any, and shall share as heir, in accordance with
31 IC 29-1-2-1, in any estate undisposed of by the will. The surviving
32 spouse **or domestic partner** is not entitled to take any share against the
33 will by virtue of the fact that the testator made no provisions for ~~him~~
34 **the surviving spouse or domestic partner** therein, except as ~~he the~~
35 **surviving spouse or domestic partner** shall elect pursuant to IC 29-1.
36 By taking under the will or consenting thereto, ~~he a surviving spouse~~
37 **or domestic partner** does not waive ~~his the~~ right to the allowance,
38 unless it clearly appears from the will that the provision therein made
39 for ~~him the surviving spouse or domestic partner~~ was intended to be
40 in lieu of that right.

41 SECTION 21. IC 29-1-3-8 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) When a testator

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1 fails to provide in his will for any of ~~his~~ **the testator's** children born or
 2 adopted after the making of ~~his~~ **the testator's** last will, such child,
 3 whether born before or after the testator's death, shall receive a share
 4 in the estate of the testator equal in value to that which ~~he~~ **the child**
 5 would have received if the testator had died intestate, unless it appears
 6 from the will that such omission was intentional, or unless when the
 7 will was executed the testator had one (1) or more children known to
 8 ~~him~~ **the testator** to be living and devised substantially all ~~his~~ **the**
 9 **testator's** estate to the spouse **or domestic partner** who survives ~~him~~.
 10 **the testator.**

11 (b) If, at the time of the making of ~~his~~ **the testator's** will, the
 12 testator believes any of ~~his~~ **the testator's** children to be dead, and fails
 13 to provide for such child in ~~his~~ **the testator's** will, the child shall
 14 receive a share in the estate of the testator equal in value to that which
 15 ~~he~~ **the child** would have received if the testator had died intestate,
 16 unless it appears from the will or from other evidence that the testator
 17 would not have devised anything to such child had ~~he~~ **the testator**
 18 known that the child was alive.

19 SECTION 22. IC 29-1-4-1 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The surviving spouse
 21 **or domestic partner** of a decedent who was domiciled in Indiana at
 22 ~~his~~ **the decedent's** death is entitled from the estate to an allowance of
 23 twenty-five thousand dollars (\$25,000). The allowance may be claimed
 24 against the personal property of the estate or a residence that is a part
 25 of the decedent's estate, or a combination of both. If there is no
 26 surviving spouse **or domestic partner**, the decedent's children who are
 27 under eighteen (18) years of age at the time of the decedent's death are
 28 entitled to the same allowance to be divided equally among them. If the
 29 personal property and a residence that is a part of the decedent's estate
 30 are less than twenty-five thousand dollars (\$25,000) in value, the
 31 spouse, **domestic partner**, or decedent's children who are under
 32 eighteen (18) years of age at the time of the decedent's death, as the
 33 case may be, are entitled to any real estate of the estate to the extent
 34 necessary to make up the difference between the value of the personal
 35 property plus the residence that is a part of the decedent's estate and
 36 twenty-five thousand dollars (\$25,000). The amount of that difference
 37 is a lien on the remaining real estate. An allowance under this section
 38 is not chargeable against the distributive shares of ~~either~~ the surviving
 39 spouse, **the surviving domestic partner**, or the children, **as the case**
 40 **may be.**

41 SECTION 23. IC 29-1-5-8 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) If after making

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1 a will the testator is divorced, all provisions in the will in favor of the
 2 testator's spouse so divorced are thereby revoked. Annulment of the
 3 testator's marriage shall have the same effect as a divorce as
 4 ~~hereinabove~~ provided **in this subsection.**

5 **(b) If, after making a will, the testator's domestic partnership**
 6 **with a former domestic partner is terminated under IC 31-11.5-4,**
 7 **all provisions in the will in favor of the testator's former domestic**
 8 **partner are thereby revoked.**

9 ~~With this exception,~~ **(c) Except as provided in this section,** no
 10 written will, nor any part thereof, can be revoked by any change in the
 11 circumstances or condition of the testator.

12 SECTION 24. IC 29-1-6-1, AS AMENDED BY P.L.238-2005,
 13 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2009]: Sec. 1. In the absence of a contrary intent appearing in
 15 the will, wills shall be construed as to real and personal estate in
 16 accordance with the rules in this section.

17 (a) Any estate, right, or interest in land or other things acquired by
 18 the testator after the making of the testator's will shall pass as if title
 19 was vested in the testator at the time of making of the will.

20 (b) All devises of real estate shall pass the whole estate of the
 21 testator in the premises devised, although there are no words of
 22 inheritance or of perpetuity, whether or not at the time of the execution
 23 of the will the decedent was the owner of that particular interest in the
 24 real estate devised. Such devise shall also pass any interest which the
 25 testator may have at the time of the testator's death as vendor under a
 26 contract for the sale of such real estate.

27 (c) A devise of real or personal estate, whether directly or in trust,
 28 to the testator's or another designated person's "heirs", "next of kin",
 29 "relatives", or "family", or to "the persons thereunto entitled under the
 30 intestate laws" or to persons described by words of similar import, shall
 31 mean those persons (including the spouse **or domestic partner**) who
 32 would take under the intestate laws if the testator or other designated
 33 person were to die intestate at the time when such class is to be
 34 ascertained, domiciled in this state, and owning the estate so devised.
 35 With respect to a devise which does not take effect at the testator's
 36 death, the time when such class is to be ascertained shall be the time
 37 when the devise is to take effect in enjoyment.

38 (d) In construing a will making a devise to a person or persons
 39 described by relationship to the testator or to another, any person
 40 adopted prior to the person's twenty-first birthday before the death of
 41 the testator shall be considered the child of the adopting parent or
 42 parents and not the child of the natural or previous adopting parents.

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1 However, if a natural parent or previous adopting parent marries the
 2 adopting parent before the testator's death, the adopted person shall
 3 also be considered the child of such natural or previous adopting
 4 parent. Any person adopted after the person's twenty-first birthday by
 5 the testator shall be considered the child of the testator, but no other
 6 person shall be entitled to establish relationship to the testator through
 7 such child.

8 (e) In construing a will making a devise to a person described by
 9 relationship to the testator or to another, a person born out of wedlock
 10 shall be considered the child of the child's mother, and also of the
 11 child's father, if, but only if, the child's right to inherit from the child's
 12 father is, or has been, established in the manner provided in
 13 IC 29-1-2-7.

14 (f) A will shall not operate as the exercise of a power of
 15 appointment which the testator may have with respect to any real or
 16 personal estate, unless by its terms the will specifically indicates that
 17 the testator intended to exercise the power.

18 (g) If a devise of real or personal property, not included in the
 19 residuary clause of the will, is void, is revoked, or lapses, it shall
 20 become a part of the residue, and shall pass to the residuary devisee.
 21 Whenever any estate, real or personal, shall be devised to any
 22 descendant of the testator, and such devisee shall die during the
 23 lifetime of the testator, whether before or after the execution of the will,
 24 leaving a descendant who shall survive such testator, such devise shall
 25 not lapse, but the property so devised shall vest in the surviving
 26 descendant of the devisee as if such devisee had survived the testator
 27 and died intestate. The word "descendant", as used in this section,
 28 includes children adopted during minority by the testator and by the
 29 testator's descendants and includes descendants of such adopted
 30 children. "Descendant" also includes children of the mother who are
 31 born out of wedlock, and children of the father who are born out of
 32 wedlock, if, but only if, such child's right to inherit from such father is,
 33 or has been, established in the manner provided in IC 29-1-2-7. This
 34 rule applies where the parent is a descendant of the testator as well as
 35 where the parent is the testator. Descendants of such children shall also
 36 be included.

37 (h) Except as provided in subsection (m), if a testator in the
 38 testator's will refers to a writing of any kind, such writing, whether
 39 subsequently amended or revoked, as it existed at the time of execution
 40 of the will, shall be given the same effect as if set forth at length in the
 41 will, if such writing is clearly identified in the will and is in existence
 42 both at the time of the execution of the will and at the testator's death.

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(i) If a testator devises real or personal property upon such terms that the testator's intentions with respect to such devise can be determined at the testator's death only by reference to a fact or an event independent of the will, such devise shall be valid and effective if the testator's intention can be clearly ascertained by taking into consideration such fact or event even though occurring after the execution of the will.

(j) If a testator devises or bequeaths property to be added to a trust or trust fund which is clearly identified in the testator's will and which trust is in existence at the time of the death of the testator, such devise or bequest shall be valid and effective. Unless the will provides otherwise, the property so devised or bequeathed shall be subject to the terms and provisions of the instrument or instruments creating or governing the trust or trust fund, including any amendments or modifications in writing made at any time before or after the execution of the will and before or after the death of the testator.

(k) If a testator devises securities in a will and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

(1) Securities of the same organization acquired because of an action initiated by the organization or any successor, related, or acquiring organization, excluding any security acquired by exercise of purchase options.

(2) Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization.

(3) Securities of the same organization acquired as a result of a plan of reinvestment.

Distributions in cash before death with respect to a described security are not part of the devise.

(l) For purposes of this subsection, "incapacitated principal" means a principal who is an incapacitated person. An adjudication of incapacity before death is not necessary. The acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal. If:

(1) specifically devised property is sold or mortgaged by; or

(2) a condemnation award, insurance proceeds, or recovery for injury to specifically devised property are paid to;

a guardian or an agent acting within the authority of a durable power

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of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(m) A written statement or list that:

(1) complies with this subsection; and

(2) is referred to in a will;

may be used to dispose of items of tangible personal property, other than property used in a trade or business, not otherwise specifically disposed of by the will. To be admissible under this subsection as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the beneficiaries with reasonable certainty. The writing may be prepared before or after the execution of the will. The writing may be altered by the testator after the writing is prepared. The writing may have no significance apart from the writing's effect on the dispositions made by the will. If more than one (1) otherwise effective writing exists, then, to the extent of a conflict among the writings, the provisions of the most recent writing revoke the inconsistent provisions of each earlier writing.

SECTION 25. IC 29-1-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. A devise to a spouse **or domestic partner** with a condition in restraint of marriage shall stand, but the condition shall be void.

SECTION 26. IC 29-1-7-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 23. When a person dies, ~~his~~ **the person's** real and personal property, passes to persons to whom it is devised by ~~his~~ **the person's** last will, or, in the absence of such disposition, to the persons who succeed to ~~his~~ **the person's** estate as ~~his~~ **the person's** heirs; but it shall be subject to the possession of the personal representative and to the election of the surviving spouse **or domestic partner** and shall be chargeable with the expenses of administering the estate, the payment of other claims and the allowance is under IC 29-1-4-1, except as otherwise provided in IC 29-1.

SECTION 27. IC 29-1-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. Whenever, after the inventory has been filed by a personal representative, it is established that the estate of a decedent, exclusive allowance to the surviving spouse, **domestic partner**, or dependent children, does not exceed an amount sufficient to pay the claims of classes 1 to 6 inclusive, the personal representative upon order of the court shall pay the same in the order provided and thereafter present ~~his~~ **the personal representative's** account with an application for the settlement and

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allowance thereof. Thereupon, the court, with or without notice, may adjust, correct, settle, allow or disallow such account, and, if the account is settled and allowed, decree final distribution, discharge the personal representative and close the administration.

SECTION 28. IC 29-1-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Domiciliary letters testamentary or domiciliary letters of general administration may be granted to one (1) or more of the persons mentioned in this subsection, natural or corporate, who are not disqualified, in the following order:

(1) To the executor or executors designated in a will that has been admitted to probate.

(2) To a surviving spouse **or domestic partner** who is a devisee in a will that has been admitted to probate.

(3) To a devisee in a will that has been admitted to probate.

(4) To the:

(A) surviving spouse **or domestic partner**; ~~or to the~~

(B) person or persons nominated by the surviving spouse **or domestic partner**; ~~or to the~~

(C) surviving spouse **or domestic partner** and the person or persons nominated by the surviving spouse **or domestic partner**.

(5) To:

(A) an heir;

(B) the person or persons nominated by an heir; or

(C) an heir and the person or persons nominated by an heir.

(6) If there is not a person listed in subdivisions (1) through (5), then to any other qualified person.

(b) No person is qualified to serve as a domiciliary personal representative who is:

(1) under eighteen (18) years of age;

(2) incapacitated unless the incapacity is caused only by:

(A) physical illness;

(B) physical impairment; or

(C) physical infirmity;

(3) a convicted felon, either under the laws of the United States or of any state or territory of the United States;

(4) a resident corporation not authorized to act as a fiduciary in this state; or

(5) a person whom the court finds unsuitable.

(c) A nonresident individual or corporate fiduciary may qualify and serve as a joint personal representative with a resident personal

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representative only by:

(1) filing with the court that has jurisdiction of the administration of the decedent's estate a bond in an amount:

(A) not less than:

(i) the probable value of the estate's personal property; plus

(ii) the estimated rents and profits to be derived from the property in the estate during the probate period; and

(B) not greater than the probable gross value of the estate; and

(2) otherwise meeting the qualifications of subsection (b).

(d) A nonresident individual who otherwise qualifies under subsection (b) may qualify to serve as a personal representative in Indiana only by filing with the court that has jurisdiction of the administration of the decedent's estate:

(1) notice in writing of the individual's acceptance of the appointment as personal representative;

(2) notice of the appointment of a resident agent to accept service of process, notices, and other documents; and

(3) a bond in an amount:

(A) not less than:

(i) the probable value of the estate's personal property; plus

(ii) the estimated rents and profits to be derived from the property in the estate during the probate period; and

(B) not greater than the probable gross value of the estate.

(e) If a personal representative becomes a nonresident of this state, the representative remains qualified to serve only if the representative files with the court that has jurisdiction of the administration of the estate a bond in an amount:

(1) not less than:

(A) the probable value of the estate's personal property; plus

(B) the estimated rents and profits to be derived from the property in the estate during the probate period; and

(2) not greater than the probable gross value of the estate.

(f) A nonresident individual who satisfies the conditions of subsection (d) or (e) submits personally to the jurisdiction of the court in any proceeding that relates to the estate of the decedent.

SECTION 29. IC 29-1-15-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. Perishable property and other personal property which will depreciate in value if not disposed of promptly, or which will incur loss or expense by being kept, and so much other ~~other~~ personal property as may be necessary to provide allowance to the surviving spouse **or domestic partner** and children pending the receipt of other sufficient funds, may be sold

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1 without notice, and title shall pass without prior authorization; but the
 2 personal representative shall be responsible for the actual value of the
 3 property unless, after making a report of such sale, and on a proper
 4 showing, the court shall approve the sale.

5 SECTION 30. IC 29-1-17-2, AS AMENDED BY P.L.95-2007,
 6 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2009]: Sec. 2. (a) After the expiration of the time limit for the
 8 filing of claims, and after all claims against the estate, including state
 9 and federal inheritance and estate taxes, have been determined, paid,
 10 or provision made therefor, except contingent and unmatured claims
 11 which cannot then be paid, the personal representative shall, if the
 12 estate is in a condition to be closed, render a final account and at the
 13 same time petition the court to decree the final distribution of the
 14 estate. Notice of the hearing of the petition shall be given under
 15 IC 29-1-16-6.

16 (b) In its decree of final distribution, the court shall designate the
 17 persons to whom distribution is to be made, and the proportions or
 18 parts of the estate, or the amounts, to which each is entitled under the
 19 will and the provisions of this probate code, including the provisions
 20 regarding advancements, election by the surviving spouse **or domestic**
 21 **partner**, lapse, renunciation, adjudicated compromise of controversies,
 22 and retainer. Every tract of real property so distributed shall be
 23 specifically described therein. The decree shall find that all state and
 24 federal inheritance and estate taxes are paid, and if all claims have been
 25 paid, it shall so state; otherwise, the decree shall state that all claims
 26 except those therein specified are paid and shall describe the claims for
 27 the payment of which a special fund is set aside, and the amount of
 28 such fund. If any contingent claims which have been duly allowed are
 29 still unpaid and have not become absolute, such claims shall be
 30 described in the decree, which shall state whether the distributees take
 31 subject to them. If a fund is set aside for the payment of contingent
 32 claims, the decree shall provide for the distribution of such fund in the
 33 event that all or a part of it is not needed to satisfy such contingent
 34 claims. If a decree of partial distribution has been previously made, the
 35 decree of final distribution shall expressly confirm it, or, for good
 36 cause, shall modify said decree and state specifically what
 37 modifications are made.

38 (c) If a distributee dies before distribution to the distributee of the
 39 distributee's share of the estate, the distributee's share may be
 40 distributed to the personal representative of the distributee's estate, if
 41 there is one; or if no administration on the deceased distributee's estate
 42 is had and none is necessary according to IC 29-1-8, the share of the

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1 deceased distributee shall be distributed in accordance with IC 29-1-8.

2 (d) The decree of final distribution shall be a conclusive
3 determination of the persons who are the successors in interest to the
4 estate of the decedent and of the extent and character of their interest
5 therein, subject only to the right of appeal and the right to reopen the
6 decree. It shall operate as the final adjudication of the transfer of the
7 right, title, and interest of the decedent to the distributees therein
8 designated; but no transfer before or after the decedent's death by an
9 heir or devisee shall affect the decree, nor shall the decree affect any
10 rights so acquired by grantees from the heirs or devisees.

11 (e) Whenever the decree of final distribution includes real property,
12 a certified copy thereof shall be recorded by the personal representative
13 in every county of this state in which any real property distributed by
14 the decree is situated except the county in which the estate is
15 administered. The cost of recording such decree shall be charged to the
16 estate.

17 SECTION 31. IC 29-1-17-3 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) Except as
19 provided in subsection (b) hereof, shares of the distributees shall abate,
20 for the payment of claims, legacies, the allowance provided by
21 IC 29-1-4-1, the shares of pretermitted heirs or the share of the
22 surviving spouse **or domestic partner** who elects to take against the
23 will, without any preference or priority as between real and personal
24 property, in the following order:

- 25 (1) Property not disposed of by the will.
- 26 (2) Property devised to the residuary devisee.
- 27 (3) Property disposed of by the will but not specifically devised
- 28 and not devised to the residuary devisee.
- 29 (4) Property specifically devised.

30 A general devise charged on any specific property or fund shall, for
31 purposes of abatement be deemed property specifically devised to the
32 extent of the value of the thing on which it is charged. Upon the failure
33 or insufficiency of the thing on which it is charged, it shall be deemed
34 property not specifically devised to the extent of such failure or
35 insufficiency.

36 (b) If the provisions of the will or the testamentary plan or the
37 express or implied purpose of the devise would be defeated by the
38 order of abatement stated in subsection (a) hereof, the shares of
39 distributees shall abate in such other manner as may be found
40 necessary to give effect to the intention of the testator.

41 SECTION 32. IC 29-1-17-4 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. When real or

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personal property which has been specifically devised, or charged with a legacy, shall be sold or taken by the personal representative for the payment of claims, general legacies, the allowance provided by IC 29-1-4-1, the shares of pretermitted heirs or the share of the surviving spouse **or domestic partner** who elects to take against the will, other legatees and devisees shall contribute according to their respective interests to the legatee or devisee whose legacy or devise has been sold or taken, so as to accomplish an abatement in accordance with the provisions of ~~IC 29-1-17-3~~ **section 3 of this chapter**. The court shall, at the time of the hearing on the petition for final distribution, determine the amounts of the respective contributions and whether the same shall be made before distribution or shall constitute a lien on specific property which is distributed.

SECTION 33. IC 29-1-17-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) When the estate is otherwise ready to be distributed, it shall be distributed in kind to whatever extent it is practicable, unless the terms of the will otherwise provide or unless a partition sale is ordered. Except as provided in subsection (b) of this section, any general legatee may elect to take the value of ~~his~~ **the legatee's** legacy in kind, and any distributee, who by the terms of the will is to receive land or any other thing to be purchased by the personal representative, may, if ~~he~~ **the distributee** notifies the personal representative before the thing is purchased, elect to take the purchase price or property of the estate which the personal representative would otherwise sell to obtain such purchase price. Values for the purposes of such distributions in kind shall be determined at a time not more than ten (10) days prior to the filing of the petition for distribution, and if necessary to avoid substantial inequities may be redetermined at any time prior to the order of distribution.

(b) If the terms of the will direct the purchase of an annuity, the person to whom the income thereof shall be directed to be paid shall not have the right to elect to take the capital sum directed to be used for such purchase in lieu of such annuity except to the extent that the will expressly provides that an assignable annuity be purchased. Nothing herein contained shall affect the rights of election by a surviving spouse **or domestic partner** against a testamentary provision as provided in this article.

(c) If property distributed in kind or a security interest therein is acquired in good faith for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution or release from the personal representative, or is so acquired in good faith

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by a purchaser from or lender to a transferee of the distributee, the purchaser or lender takes title free of any right of an interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This subsection protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to ~~himself,~~ **the distributee**, and a purchaser from or lender to any other distributee or ~~his~~ **the distributee's** transferee. To be protected under this subsection, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution.

SECTION 34. IC 31-11.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

ARTICLE 11.5 DOMESTIC PARTNERSHIPS

Chapter 1. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Domestic partner" means an individual who is in a relationship with another individual in which both individuals:

- (1) are at least eighteen (18) years of age;**
- (2) are not related to each other by blood or marriage within four (4) degrees of consanguinity under civil law;**
- (3) are not married or in a civil union or domestic partnership with another individual;**
- (4) agree to be in a relationship of mutual interdependence in which each individual contributes to the maintenance and support of the other individual and the relationship; and**
- (5) register with the clerk of the circuit court of the county in which the individuals reside as a domestic partnership.**

Sec. 3. "Domestic partnership" means a domestic partnership registered under IC 31-11.5-2.

Chapter 2. Domestic Partnership Registry

Sec. 1. The clerk of each circuit court shall maintain a domestic partnership registry.

Sec. 2. A couple may register the couple's relationship of mutual interdependence as a domestic partnership if:

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(1) each individual satisfies the requirements described in IC 31-11.5-1-2(1) through IC 31-11.5-1-2(4); and

(2) the individuals have been legally domiciled together in Indiana for at least the twelve (12) months preceding the date the relationship is registered as a domestic partnership under this chapter.

Sec. 3. To register as a domestic partnership, a couple must jointly file with the clerk of the circuit court of the county in which the domestic partnership will maintain a common residence a declaration under oath establishing the domestic partnership on a form meeting the requirements of IC 31-11.5-3.

Sec. 4. The clerk of the circuit court shall retain the declaration in the domestic partnership registry established under section 1 of this chapter and return two (2) copies of the declaration to the domestic partners at the address provided as their common residence.

Sec. 5. The clerk of the circuit court shall charge a fee for registration to pay the expenses incurred by the clerk to maintain the domestic partner registry.

Chapter 3. Forms

Sec. 1. A domestic partnership registry established under this article must be maintained on forms that meet the requirements of this chapter.

Sec. 2. A declaration filed under IC 31-11.5-2 must:

(1) adequately identify each individual signing the form by name, including former names, residence, and date and place of birth; and

(2) contain an assertion under oath that each individual satisfies the requirements described in IC 31-11.5-1-2(1) through IC 31-11.5-1-2(4) at the time the declaration is filed.

Chapter 4. Termination of a Domestic Partnership

Sec. 1. (a) A registered domestic partnership is terminated by the marriage of either registered domestic partner or by the filing with the circuit court clerk of either of the following:

(1) A notice under oath signed by both registered domestic partners before a notary that the registered domestic partners consent to the termination.

(2) A notice under oath from either registered domestic partner that the other registered domestic partner was served with a notice of intent to terminate the partnership.

(b) Except as provided in subsection (c), the notice described in subsection (a)(2) must be personally served upon the registered

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domestic partner.

(c) If personal service is not feasible, then substitute service may be made in the manner prescribed by the Indiana Rules of Trial Procedure for the commencement of a civil action.

Sec. 2. The termination of a domestic partnership under this chapter is effective:

(1) on the date either domestic partner is married;

(2) on the date that a consent to terminate the domestic partnership is filed in the case of a termination described in section 1(a)(1) of this chapter; or

(3) sixty (60) days after the date on which service of a notice of intent to terminate the domestic partnership is made in the case of a termination described in section 1(a)(2) of this chapter.

Sec. 3. If a third party in reliance on the existence of a registered domestic partnership suffers loss because of a failure to receive adequate notice of termination, each registered domestic partner responsible for the failure to give notice is liable to pay the loss.

SECTION 35. IC 32-17-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) This section does not apply to:

(1) mortgages;

(2) conveyances in trust; or

(3) conveyances made to husband and wife; or

(4) conveyances made to a domestic partnership (as defined in IC 32-17-3-0.5).

(b) Every estate vested in executors or trustees as executors shall be held by them in joint tenancy.

(c) Except as provided in subsection (b), a conveyance or devise of land or of any interest in land made to two (2) or more persons creates an estate in common and not in joint tenancy unless:

(1) it is expressed in the conveyance or devise that the grantees or devisees hold the land or interest in land in joint tenancy and to the survivor of them; or

(2) the intent to create an estate in joint tenancy manifestly appears from the tenor of the instrument.

SECTION 36. IC 32-17-3-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 0.5. (a) As used in this chapter, "domestic partner" has the meaning set forth in IC 31-11.5-1-2.**

(b) As used in this chapter, "domestic partnership" means a domestic partnership registered under IC 31-11.5-2.

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SECTION 37. IC 32-17-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) This section applies to a written contract in which a husband and wife **or a domestic partnership**:

(1) purchase real estate; or

(2) lease real estate with an option to purchase.

(b) Except as provided in subsection (d), a contract described in subsection (a) creates an estate by the entireties in the husband and wife **or domestic partners**. The interest of neither party is severable during the marriage **or domestic partnership**.

(c) Upon the death of either party to the marriage **or domestic partnership**, the survivor is considered to have owned the whole of all rights under the contract from its inception.

(d) If:

(1) a contract described in subsection (a) expressly creates a tenancy in common; or

(2) it appears from the tenor of a contract described in subsection

(a) that the contract was intended to create a tenancy in common; the contract shall be construed to create a tenancy in common.

SECTION 38. IC 32-17-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. **(a)** If a husband and wife are divorced while a contract described in section 1(a) of this chapter is in effect, the husband and wife own the interest in the contract and the equity created by the contract in equal shares.

(b) If a domestic partnership is terminated under IC 31-11.5-4 while a contract described in section 1(a) of this chapter is in effect, the former partners own the interest in the contract and the equity created by the contract in equal shares.

SECTION 39. IC 32-17-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. **(a)** If:

(1) a husband and wife execute a title bond or contract for the conveyance of real estate owned by them as tenants by the entireties; and

(2) one (1) of the spouses dies:

(A) during the continuance of the marriage; and

(B) before the whole of the agreed purchase price has been paid;

the interest of the deceased spouse in the unpaid part of the purchase price passes to the surviving spouse in the same right as the surviving spouse's rights of survivorship in real estate held as tenants by the entireties.

(b) If:

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(1) a domestic partnership executes a title bond or contract for the conveyance of real estate owned by the domestic partnership as tenants by the entirety; and

(2) one (1) of the partners dies:

(A) during the continuance of the domestic partnership; and

(B) before the whole of the agreed purchase price has been paid;

the interest of the deceased partner in the unpaid part of the purchase price passes to the surviving partner in the same right as the surviving partner's rights of survivorship in real estate held as tenants by the entirety.

SECTION 40. IC 32-17-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) A joint deed of conveyance by a husband and wife **or domestic partnership** is sufficient to convey and pass any interest described in the deed of either or both of them in land held by them as:

(1) tenants in common;

(2) joint tenants; or

(3) tenants by the entirety.

(b) An executed and recorded power of attorney by one (1) spouse **or domestic partner** to the other spouse **or domestic partner** authorizing the conveyance by the attorney in fact of any interest owned:

(1) individually by the grantor (as defined in IC 32-17-1-1) of the power of attorney; or

(2) with the grantor's spouse;

enables the attorney in fact through the exercise of the power of attorney to effectively convey the interest in land by individually making a deed of conveyance.

SECTION 41. IC 32-17-11-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 29. (a) This section does not apply to an account.

(b) Except as provided in ~~subsection~~ **subsections (c) and (d)**, personal property that is owned by two (2) or more persons is owned by them as tenants in common unless expressed otherwise in a written instrument.

(c) Upon the death of either husband or wife:

(1) household goods:

(A) acquired during marriage; and

(B) in possession of both husband and wife; and

(2) any:

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1 (A) promissory note;
 2 (B) bond;
 3 (C) certificate of title to a motor vehicle; or
 4 (D) other written or printed instrument;
 5 evidencing an interest in tangible or intangible personal property
 6 in the name of both husband and wife;
 7 becomes the sole property of the surviving spouse unless a clear
 8 contrary intention is expressed in a written instrument.

9 **(d) As used in this subsection, "domestic partnership" means a**
 10 **domestic partnership registered under IC 31-11.5-2. Upon the**
 11 **death of either partner in a domestic partnership:**

12 **(1) household goods:**

13 **(A) acquired during the domestic partnership; and**

14 **(B) in the possession of both partners; and**

15 **(2) any:**

16 **(A) promissory note;**

17 **(B) bond;**

18 **(C) certificate of title to a motor vehicle; or**

19 **(D) other written or printed instrument;**

20 **evidencing an interest in tangible or intangible personal**
 21 **property in the name of both partners in the domestic**
 22 **partnership;**

23 **becomes the sole property of the surviving partner unless a clear**
 24 **contrary intention is expressed in a written instrument.**

25 SECTION 42. IC 32-17-13-2 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as
 27 otherwise provided by statute, a transferee of a nonprobate transfer is
 28 subject to liability to a decedent's probate estate for:

29 (1) allowed claims against the decedent's probate estate; and

30 (2) statutory allowances to the decedent's spouse, **and domestic**
 31 **partner (as defined in IC 32-17-3-0.5), or children;**

32 to the extent the decedent's probate estate is insufficient to satisfy those
 33 claims and allowances.

34 (b) The liability of the nonprobate transferee may not exceed the
 35 value of nonprobate transfers received or controlled by the nonprobate
 36 transferee.

37 (c) The liability of the nonprobate transferee does not include the
 38 net contributions of the nonprobate transferee.

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